

# Workers' Compensation Advisory Committee (WCAC)

Meeting Minutes

June 27, 2005

## Introductions:

### Present:

#### Committee Members:

Business Representatives: Amber Carter, Association of Washington Business; Jon Warling, Mon-Jon Orchards; Mike Sotelo, W.G. Clark Construction Company

Labor Representatives: Owen Linch, Joint Council of Teamsters No. 28; Dave Johnson, Washington Building & Construction Trades Council; Robby Stern, Washington State Labor Council, AFL-CIO

Self-Insured Employers' Representative: Katrina Zitnik, Costco Wholesale

Self-Insured Workers' Representative: Ellie Menzies, Service Employees State Council

Ex Officio Member: Tom Egan, Board of Industrial Insurance Appeals

Chair: Bob Malooly

Recorder: Laurie Jenkins

Presenters: Bob Malooly, Jamie Lifka, Gary Franklin, Bill Vasek, Sandy Dziedzic, Loris Gies, Vickie Kennedy, Tom Egan

Guests: Peter Bogdanoff, Amy Brackenbury, Janice Camp, Grace Casey, Chris Cordes, Nancy Dicus, Sarah Dylag, Dan Fazio, Lauren Gubbe, Tammie Hetrick, Joe Jauquet, Melissa Johnson, Dave Kaplan, Lisa Kelley, Tom Kwieciak, Carolyn Logue, Shannon Mathis, Carl Nelson, Jill Reinmuth, Chris Ristine, Rick Slunaker, Vicky Smith, Jennifer Strus, Michael Temple, Pat Vincent

L&I Staff: Barb Collier, Sandy Dziedzic, Gary Franklin, Loris Gies, Lee Glass, Karen Jost, Vickie Kennedy, Kathy Kimbel, Ernie LaPalm, Jamie Lifka, Joshua Ligosky, Robert Malooly, R.T. Nelson, Dave Overby, Russ Redding, Lisann Rolle, Frank Romero, Judy Schurke, Hal Stockbridge, Christine Swanson, Jean Vanek, Bill Vasek, Cheri Ward, Gary Weeks, Trista Zugel

Bob Malooly first welcomed Director Gary Weeks and introduced him to the audience. Gary stated that he was happy to join the Department and looked forward to working with everyone to provide industrial insurance that is both affordable to business and supportive of injured workers. He appreciated that Governor Gregoire has given him this opportunity to create and maintain safe workplaces for the citizens of Washington. He directed four different agencies under four Oregon governors, which included the departments of Human Services, State Lottery, Insurance and Finance, and Administrative Services. Gary stated he was counting on the Committee to provide him with responsible advice to make the system better, and looked forward to an open and honest dialogue with the Committee.

**Review/Approval of December 13, 2004 Meeting Minutes** – Minutes were approved as written.

**Special Meeting Schedule – Bob Malooly**

Bob stated that the Committee will have a busy list of issues to address soon, and asked if they wanted to schedule a make-up meeting for the cancelled March meeting. The Committee unanimously agreed no make-up session was needed and discussed dates for special meetings. The following dates were selected for special sessions:

Special Meeting Dates	Time	Subject	Location
July 20, 2005	9 a.m. - 4 p.m.	Retro Rating Classification	Auditorium
August 22, 2005	1:30 – 3:30	Overall rates	TBD
September 26, 2005	9 a.m. to 4 p.m.	Experience Rating	S118 & S119

**Proposed Amendment to the Medical Aid Rules – Jamie Lifka**

Jamie announced that the Department is proposing changes to the Washington Administrative Code. The Department has determined that workers and victims of crime can be delayed timely, necessary medical treatment due to the fact that the current rule requires a co-signature by the attending doctor when therapy is ordered by a physician assistant. She informed the Committee that the Department adopted an emergency rule on May 3, 2005, and we are currently in the process of adopting the permanent rule. She stated the public hearing on the proposed WACs is scheduled for July 19 at 2 p.m. in the Auditorium. Written comments to the proposed changes should be sent to her and will be accepted up to 5 p.m. on July 26, 2005. The proposed rules are scheduled for adoption on August 30, 2005, with a scheduled effective date of October 1, 2005.

*Labor asked if this is expected to be a controversial topic?*

*Business stated the business community was surprised by this proposed change and expressed concern about watching over the data carefully to ensure proper authority is granted.*

*Labor stated the Committee would like to see the data.*

Jamie assured the Committee she would continue to provide them timely updates.

**Small Employer Conference – Bob Malooly**

Bob informed the Committee that a number of small employers typically do not have workers' compensation claims. As a result, when they do experience a claim, they often make an uninformed decision that negatively affects both the employer and the worker in the long run. To remedy this problem the Department has an initiative underway to help these small employers.

*Labor stated the Committee would like to be updated on the progress made by the Department as model for small business services is developed.*

Bob stated he will keep the Committee informed of the Department's efforts to deal with small employers more efficiently. A primary focus of this effort will be education to enable small employers to make good business decisions for themselves and for the injured worker.

## **FairIsaac– Bob Malooly**

Bob informed the Committee of the one-year FairIsaac contract to score workers' compensation claims. The Department expects this claim-scoring product will assist in handling our claims better by enabling us to spot and act appropriately on the high scoring claims and to refer claims to investigators when appropriate. The goal of this contract is help the Department treat injured workers.

*Labor asked if the Department anticipated the need to add staff?*

Bob replied the Department does not plan to add staff. We expect this tool will enable us to better utilize our most experienced claim managers on the more complicated claims. We hope that we can ultimately provide better service by reducing delays and achieving better outcomes for the injured workers at lower costs.

*Labor stated they had not received any information concerning employer fraud.*

Bob stated the Department is currently investigating an underground economy. Carl Hammersburg, Program Manager for L&I's fraud program, can provide the Committee an update if one is desired. Our mission is to provide a balanced approach and the department needs the Committee's assistance to affirm this effort is a good use of our resources. Gary stated he is most interested in improving the claims projects work, prevention and fraud. We will focus on employers who are supportive in getting injured workers back to work promptly.

*Business stated they found this discussion very exciting because it sounds like the agency is trying to put the correct resources at the right problems – predictive modeling, an approach her business is currently using.*

Bob stated we will report our progress at the Committee's next regular meeting in September.

## **Occupational Health Services Project Update – Gary Franklin**

Dr. Franklin first introduced Dr. Wickizer, who joined the meeting by phone, and then summarized the outcome evaluation for the Western Washington Centers for Occupational Health & Education (COHE). He explained that COHE's goal was to reduce worker disability and to promote improved treatment outcomes by providing training and resources to participating doctors in two communities—Renton and Spokane. Today's report covered the pilot at Valley Medical Center in Renton, Washington.

The Renton COHE project began recruiting physicians in March 2002 and started treating patients in July 2002. The team assessed disability, satisfaction, employment outcomes, and costs of patients treated by COHE physicians relative to outcomes of patients within the same pilot area who were treated by a comparison group of non-COHE physicians. The evaluation is based on an analysis of 22,556 cases treated in the evaluation year—10,730 COHE cases and 11,826 comparison-group cases. The team also evaluated worker satisfaction with their health care, worker employment outcomes, and provider satisfaction. Important differences favoring the COHE in disability measures, employment outcomes, and medical and disability costs were discovered. The analysis concluded that COHE patients were just as satisfied with their care as the comparison group of patients, who were treated by non-COHE physicians. Also, the physician survey indicated that a majority of the COHE physicians indicated they felt their ability to treat injured workers had improved, were satisfied with the pilot, and reported a greater willingness to treat more injured workers.

Regarding disability and employment outcomes, several major findings include:

- For carpal tunnel cases, COHE patients had greatly reduced incidence of disability (13.2% versus 40.8%) and had far fewer days of disability (87.1 days versus 126.8 days)
- COHE patients had fewer days of timeloss on average (76.9 days versus 92 days)
- COHE patients with back sprains treated in the hospital emergency department had lower incidence of disability (16.9% versus 34.9%).

The pilot also concluded these improved disability and employment outcomes also led to a significant cost savings. Dr. Franklin said the evaluation's analysis estimated savings in cost per claim associated with the COHE to be approximately \$585. The aggregate net savings, based upon 10,000 patients treated in the evaluation year are \$5.8 million, or \$585 per case. The favorable outcomes of the Renton COHE pilot concluded that disability among injured workers through COHE could be substantially reduced without sacrificing provider choice or diminishing patient satisfaction and result in lower medical and disability costs, especially for carpal tunnel syndrome cases. Dr. Franklin said the findings of the Spokane pilot evaluation will be presented in June 2006.

*The Self-Insured Workers' Representative asked if follow-up data will be provided.*

Dr. Franklin responded that an update will be provided after two years of study. He then asked if anyone else had questions for him or for Dr. Wickizer.

*Business asked if there was a need for additional recruits?*

*Labor asked if Valley Medical Center had any concerns regarding allocation of funds?*

Patricia Vincent from Valley Medical Center stated the project was going forward at this time and there were not any funding concerns. Dr. Franklin added that the Department will continue to monitor the project for any funding concerns.

*Labor suggested the project consider including more non-English speaking patients and physicians. Demographics now show more non-English speaking workers in Western Washington than in Eastern Washington.*

Dr. Franklin stated he was eager to see the Spokane COHE results and will be observing this as L&I expands the project into Yakima. He also stated we need to pull more specialists into the projects, and looked forward to working with business and labor to accomplish this.

*Labor stated L&I has not been able to successfully integrate the self-insurers. The question is whether the self-insurers want to participate, and if so, how will the administrative cost be assessed?*

Bob stated the self-insurers originally were not interested in participating in COHE. Given the pilot's proven success, however, some have changed their minds. Several are considering signing up. It is understood the self-insurers will pay their fair share.

*Labor stated we will need to figure that out.*

Dr. Franklin stated the self-insurers have asked us to figure out the overlap of functions. He is confident we can successfully include the self-insurers and move forward on this project.

Bob said we want physicians to be happy because it will ensure better outcomes for injured workers. We need to continue to explore ways of dealing with the physician community.

### **Employer-Based Unit Update – Sandy Dziedzic**

Sandy informed the Committee that the employer-based unit continues to be huge success. As previously mentioned, the employer assignments are based on business size and claim frequency

so as to achieve the maximum efficiency for both the employer and claim manager. The unit excludes medical only, hearing loss, CRI, and out-of-state claims. The unit was expanded on February 14, 2005. Three full units and five partial units are now employer-based. We currently have 1,018 policies and 1,566 accounts assigned to claim managers. The efficiencies have been well worth the expansion efforts. She plans now to start working with the smaller employers.

### **Policy on Contingency Reserve – Bob Malooly**

Bob stated that formal audit results are not due at this time, but asked the committee if they would like to spend time discussing this subject?

*Business said the subject was important but questioned whether a discussion at this time would be premature. She felt it would not be advisable to set a hard and fast policy now.*

Gary questioned just what exactly were we asking? He said we need a good, stable reserve—not too much, not too little. We will need to carefully consider any recommended policy.

*Labor stated that in 1994 there was a common understanding that the contingency reserve target was 10%. He expects contingency reserve to be a part of the rating setting discussion.*

Bob then said we will defer a discussion at this time, but will keep the Committee informed as to where the Department stands. As of March 31, 2005, the Department had a contingency reserve of \$1,032,124,000, which was a decrease of \$32,171,000 from last quarter. Stock market results have carried over to the bottom line. The contingency reserve is 11.7% of the liabilities, which is close to the 10% target. He reminded the Committee that targets vary by fund and risk levels are not the same by fund either. The Pension Fund (610) fund has the least amount of risk.

### **Actuarial Update – Bill Vasek**

The Quarterly Portfolio Update for the quarter ended March 31, 2005 showed a total return of 1.24% in the Accident Fund for year-to-date 2005, in spite of a -0.26% additional equity return. The additional equity return for the Medical Aid Fund during this period was a -0.75%. The majority of the Department's investments are in fixed income. The State Fund had a 5.99% annualized statutory return rate in 2005 year-to-date, which is less than the prior years and which is part of the downward trend in fixed income returns. The 10-year Treasury Bond continues to trend downward since 1981. At this time we do not expect any big changes with yields bouncing around sideways.

*Labor asked if we need to lower our discount rate?*

Bill said we need to monitor the bottom line.

As of March 31, 2005, the total estimated future benefits were \$8,172,624,000 and the Claims Administrative Expense liability was \$374,156,000, as shown on the Statement of Financial Condition for the State Fund. To see some of the detail behind these numbers, Bill directed the Committee's attention to the Washington State Fund Loss and Claims Administrative Expense Liabilities exhibit, which discloses the effect of discounting the non-pension liabilities from the undiscounted best estimate of liabilities. At March 31, the best estimate column reports a total loss and claims administrative expense liabilities of \$11,796,961,000. After discounting the non-pension liabilities at 4.0% and adding a 4% load for uncertainty, the final reserves total \$8,304,608,000, which gives a net discount of 28% from the best estimate.

*Labor stated a 28% discount raises questions.*

Gary stated that the Department's discounting practices are more aggressive than what you would see with other insurance carriers. Bob reminded the Committee that our investment yield is paying one-third of the Department's program, so we need to consider the time value of money. However, when the investment yield goes below the discount rates, the Department is negatively affected. We do not want to be in a situation where we are not making appropriate decisions. Finally, if we lower the 6.5% pension discount rate, self-insurers will have to contribute more money.

*Business asked if there are other policies being considered?*

Gary stated the Department isn't posing a change at this time. It is appropriate, however, to consider all our alternatives given the importance of the issue. Bob stated from an administrative perspective we want to speed up the process of getting people back to work as soon as possible.

*Business stated when we consider the number of pensions here compared to other states, this is the same discussion from our standpoint.*

Bill stated in the past the underlying trend was 150 pensions per quarter, whereas now the trend is averaging 300 pensions per quarter. The timeloss duration trend is still growing, which is correlated strongly (89% coefficient) with the growing proportion of PPD claims amongst all claims receiving timeloss. Over the last four payment cycles the Department has averaged a 6.1% annualized medical growth rate, excluding hearing loss claims. The projected future average is 7.0%.

The Medical Aid benefits for the quarter ending March 31, 2005 were \$154, compared to \$174 for the Accident Fund benefits. The effect from prior quarters for the Medical Aid benefits was - \$17 million, compared to \$37 million for the Accident Fund benefits. As part of this, reserving model changes reduced the medical aid reserve \$36 million. In total, the Medical Aid benefits incurred totaled \$137 million, whereas the Accident Fund benefits incurred totaled \$212 million. The Accident Fund premiums assessed for first quarter 2005 is estimated at \$188,000,000, compared to the Medical Aid premiums, which are assessed at \$143,000,000. There was strong 6% annual growth in the underlying insurance exposure trend due to higher hours reported for the past seven quarters.

Bill directed the Committee's attention to the Testing Accuracy of Ratemaking Loss Ratio Projections chart. Loss ratios are the most critical element in projecting the break-even rate levels annually. For the 2003 rating year the current estimate of Accident Fund loss ratios is now 6.6% higher than what was originally estimated, compared with -3.7% lower ratios for the Medical Aid Fund. These developments are caused by higher than expected duration in the Accident Fund and lower than expected medical growth in the Medical Aid Fund. The last five rating years are similar in that the current Accident Fund estimates are higher and the Medical Aid Fund estimates are lower than originally projected at the time that past premium rates were proposed. Bill stated we are continually fine tuning our actuarial estimation processes using this type of information as feedback.

Bill explained the changes in the Medical reserving methodology, which now separates the hearing loss and audiology payments from other medical payments. The reason for the change was the significantly different payment and claim count patterns for hearing loss and audiology from other medical payments, being longer in duration. The audiology cases are modeled to end when the claimant dies.

Bill gave an example of the department's calculation of a pension reserve for a 50-year-old. The calculation depends on the worker's monthly benefit and a pension annuity table as determined by the department as referred to in RCW 51.44.070. He then gave the history of the current

pension annuity tables established in 1987. Currently, no distinction exists by sex; the same tables are used for state fund and self-insureds; and has not been adopted in WAC. The current tables still maintain a pretty good actuarial fit.

*Business asked why the actuarial fit is good*

*Labor expressed confusion. We thought the Department was underfunded. Have the mortality tables proven to be accurate?*

The actuaries study the mortality assumptions annually. Overall, the mortality experience is close to what we would expect using the current tables. However, women have different mortality experience than men.

Bill briefly described the actuarial 2005 mortality study process for the Committee. Data concerning the lives and deaths of pensioners in the Reserve (Pension Fund) from 1989 through 2004 was collected. The probability of death was calculated per year by age and sex. Smooth curves with the best fits to the probabilities were chosen and pension annuity factors were then calculated using the current pension discount rate of 6.5%. The proposed injured workers' annuity table has separate male and female tables. Male mortality appears slightly worse than in the old table, whereas female mortality appears better than the old table. The proposed spouses and widowers' annuity tables also separate the male and female tables and based on data only on the widowers. Bill explained that after the department's actuarial study was completed, an independent review of this study was conducted by actuaries at Milliman USA. The proposed WACs have been written and the Department plans to proceed with the rulemaking process. The new tables will be used for both State Fund and self-insured pensions. All pensions on June 30, 2006 will be recalculated using the new tables.

Bill stated that gender has the greatest impact on the annuity tables.

*Labor asked if the pension tables take into account gender, would we generate more dollars in pensions? Also, once the tables are changed, will the bottom line change as well?*

Bill responded that if we make changes to the Pension Fund liability tables, TPD pensions combined would increase 1.4% and fatal pensions 0.8% because females live longer than males. The Pension Fund liability would increase \$28 million, or 1.3%. The Accident Fund TPD pension liability for future pensions to be granted would increase about \$11 million.

*Business asked the purpose of the \$28 million?*

Bill stated we expect to pay women longer because they typically live longer than men.

*Business asked Bill to describe the rulemaking schedule for changing the pension tables.*

Bill stated he hoped to have the rulemaking done by the end of this year in order to have the pension WAC in place sometime next year.

### **Final Report for Interpretive Services – Loris Gies**

Loris explained that an injured worker's ability to communicate with health care and vocational providers is critical to their recovery and return to work. The Department determined that interpreter use had increased 81% since 1998, with costs up 325% during this time. Given this significant increase in cost and utilization, a three-phase project was designed. The first phase focused on improving the Department's qualification standards for interpreters. The second phase addressed the Department's interpretive services costs, and the third phase concerned

website access to L&I interpretive services provider information for use by L&I staff, health care and vocational rehabilitation providers.

Thanks to the cooperation and feedback of a number of entities including Northwest Translators & Interpreters Society, the Washington State Court Interpreters & Translators Society, the Society of Medical Interpreters, the Washington State Registry of Interpreters for the Deaf and Hearing Impaired, the Northwest Justice Center, Centralia College, Columbia Legal Services, and the Department of Corrections, among others, Loris was able to get a broad perspective of payment and interpreting practices. Some of the changes, which become effective July 1, 2005, include the following:

1. Required interpreter and translator certification. Revised provider standards to require credentials from a recognized organization or agency. Interpreters must be at least 18 years old. In January 2005, a Provider Bulletin was distributed with the new provider requirements. All Washington interpreter accounts were inactivated effective June 30, 2005.
2. Reduced the hourly fee for direct services from \$60 per hour to \$48 per hour.
3. Reduced the administrative burden by having one rate and one code counted from the time the appointment begins until completion. This eliminates different bills for waiting, forms completion and actual interpreting time.
4. Created an interpretive services appointment record form to confirm the interpreting encounter will be supplied.
5. Promoted access to interpreters by listing individual interpreters by LNI provider account numbers on the Department's webpage effective July 1, 2005.

Loris predicted a savings of approximately \$1 million for Fiscal Year 2006. She informed the Committee that she will leave State service shortly, but that a monitoring process is in place to measure total interpreter cost, total claims using interpreter services, total number of visits using interpreters, total interpreter provider accounts, and any complaints received by provider fraud.

*Labor asked who has responsibility for providing an interpreter?*

Loris responded it was the responsibility of the provider to get an interpreter.

*Labor asked who has responsibility for providing an interpreter in the case of an independent medical exam?*

Loris stated that the Department must provide an interpreter in the case of an IME.

*Labor asked if the project team was capturing data on the Report of Accident? Are the communication problems west of the mountains different than those in Eastern Washington?*

Bob stated the Report of Accident is the first indicator of language concern. Loris stated the Department has a language line at \$1.19/minute. She said the Department wants to ensure that the interpreter's role is not to drive the communication for the injured worker.

*Business questioned the \$1.19 language line interpreter cost.*

Loris replied the cost was set by the General Administration contract. She thought it was a reasonable fee.

**Legislative and Budget Implementation Update – Vickie Kennedy**

Vickie directed the Committee's attention to a handout providing information on all 2005 legislation that was adopted affecting the workers' compensation system. She asked anyone interested in additional details to call her directly. She stated she would be seeking stakeholders' input regarding SHB 1918 (reporting of claims by employees to employers and by employers to L&I).

SHB 1856 provides for annual audits by the State Auditor's Office of the State Fund regarding certain issues. The Committee was asked about its interest in meeting with SAO representatives to discuss the scope of the audit, the criteria for selection of any contracted firms, and any other specific items they would like to see addressed. Would the committee prefer detailed discussions take place with a smaller subgroup (Amber Carter, Dan Fazio, Dave Johnson, Robby Stern) or with the full committee?

*Business indicated the full committee is the most appropriate and that the business representatives would be asking for feedback from the employer community. We need to make sure the proposed discussions do not create a perception that L&I is driving the audit. The auditors should approach the WCAC with its questions, not vice versa. She suggested the Auditor identify the areas to address in the audit.*

Bob responded that L&I's role was only to facilitate the interests for the WCAC. Gary commented that this could be an opportunity to ask the Auditor to look at various areas of interest to the Committee.

*Labor stated the Legislature mandated in SHB 1856 the items the Auditor will review.*

Bob said the Department will comply with all legislative requirements. If the Committee has specific issues to address, this would certainly be the appropriate time bring them up. He asked Vickie Kennedy to contact the SAO staff to update them concerning the WCAC's feedback.

*Labor suggested the Committee might want to consider discussing this matter on July 20 during lunch.*

### **Board of Industrial Insurance Appeals Update – Tom Egan**

Tom reported that the Board of Industrial Insurance Appeals received 1,159 appeals in May 2005, compared to 1,008 during the same month last fiscal year. Appeals granted totaled 587. He then provided a brief summary of the following graphs:

- *Appeals Filed and Granted by Month:* In March 2005, quarterly appeals increased by 81 from December 2004. Total appeals granted in March 2005 decreased by 179 during the same period.
- *Department Reassumption Rate by Quarter:* The reassumption rate decreased slightly from last quarter.
- *Quarterly Agreements and Dismissals:* The number of both quarterly agreements and dismissals remain at close levels.
- *Affirmance Rate by Month – PD&Os and D&Os:* State Fund and Self-Insured affirmance rates are averaging around 73 percent and 55 percent, respectively.
- *Average PD&O Lag-time by Quarter for Hearing Judges:* The lag time in March 2005 was 26 days compared to 32 days in December 2004.
- *Quarterly Average Weeks to Completion:* In March 2005, the Board averaged 34.4 weeks from date filed to date of final order, just slightly below its 35-week goal.

- *Pending Appeal Caseload by Quarter:* Active appeals increased slightly from 5,210 in December 2004 to 5,264 in March 2005.
- *Final Orders Appealed to Superior Court-Quarterly:* Final orders appealed to the Superior Court in March 2005 decreased slightly to 108, compared to 139 at December 2004.

**Wrap-Up – Bob Malooly**

Bob directed the Committee's attention to the new hire flyer in their packets. He explained that the Department is working cooperatively by doing cross matches with the Division of Child Support at DSHS and the Employment Security Department. So far, the flyer has generated considerable interest by other groups with whom we may also form a cooperative team.

Bob stated the Strategic Plan meeting has been postponed until spring 2006. After the next legislation session he is looking forward to working with the Committee on the workers' compensation strategic plan to achieve the Department's key objectives.

The meeting adjourned.